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In the Supreme Court of the United States

OCTOBER TERM, 1963

No. 909

AMERICAN COMMITTEE FOR THE PROTECTION OF THE FOREIGN BORN, PETITIONER

v.

SUBVERSIVE ACTIVITIES CONTROL BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINION BELOW

The opinion of the court of appeals (Pet. App. A pp. 1–23) has not yet been reported.

JURISDICTION

The judgment of the court of appeals was entered on December 17, 1963, and the petition for a writ of certiorari was filed on March 12, 1964. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

The Subversive Activities Control Act of 1950 provides for the registration of any "Communist-front

organization" which is defined (Section 3(4)) as an organization "which (A) is substantially directed, dominated, or controlled by a Communist-action organization, and (B) is primarily operated for the purpose of giving aid and support to a Communist-action organization * * *." Petitioner was found by the Subversive Activities Control Board to be controlled by, and to be operated primarily to give aid and support to, the Communist Party, which the Board had previously found to be a Communist-action organization. The questions presented are:

1. Whether the provisions of the Subversive Activities Control Act of 1950 providing for the registration of "Communist-front" organizations violate the First Amendment.

2. Whether the aid component of Section 3(4) is satisfied by evidence that petitioner aids and supports the Communist Party by peaceful activities, like participating in litigation and, if so, whether this renders the statute unconstitutionally vague under the due process clause of the Fifth Amendment.

3. Whether the Board violated the due process clause or the Act by refusing to allow petitioner to relitigate whether the Communist Party was a Communist-action organization.

4. Whether the Board erred, with regard to the control component of Section 3(4), either in making its findings of fact or in ruling on appropriate cross-examination of a government witness.

STATUTE INVOLVED

The pertinent provisions of the Subversive Activities Control Act, 50 U.S.C. 781, *et seq.*, appear in Appendix C to the petition.

STATEMENT

The Attorney General began this proceeding by filing a petition with the Subversive Activities Control Board for an order requiring petitioner to register under the Subversive Activities Control Act as a Communist-front organization. On June 27, 1960, the Board issued a Report and Order determining petitioner to be a Communist-front organization and ordering it to register. The court of appeals upheld the Board's order.[1]

1. *Control by the Communist Party.*—a. Petitioner's constitution provides that it shall be a "non-membership" body (R. Ex. 88).[2] Consequently, its annual conferences are attended by delegates from various organizations and any interested members of the general public (Tr. 4873–4875, 2462–2465, 2489). Between conferences, the organization is run by the executive secretary.

From December 1941 until his death in 1959, the executive secretary and dominant figure was Abner

[1] The court of appeals initially had remanded the case to the Board for consideration of additional evidence and the Board thereafter filed a Report on Reconsideration, which is not relevant to the questions raised by the petition for certiorari.

[2] Since the Attorney General was the petitioner before the Board, the government's exhibits are designated as "P. Ex." Exhibits introduced by the present petitioner, the respondent before the Board, are designated as "R. Ex."

Green. John Lautner testified that early in 1942, when he was a functionary of the Communist Party, he and another Party functionary, Avro Landy, were assigned by the Party to decide whether Irving Novick should be replaced by Green as the leader of the Committee; that Green and Novick were both Party members and subject to Party discipline; and that after a meeting of Lautner and Landy with Green and Novick at Communist Party headquarters in New York, they decided that Green should be the head (Tr. 991–996). Lautner said that Green attended the 1948 Convention of the Communist Party (Tr. 1007), and that he saw him in the Party building on numerous occasions between 1948 and 1950, when Lautner left the Party (Tr. 1094–1095). He also testified that he had known Harriet Barron, who was administrative secretary of the Committee from 1945 or 1946 through the time of the hearing in 1955, as a Party member (Tr. 1013). According to Lautner, petitioner's leaders, including Green and Miss Barron, "attended Party meetings and had the benefit of the discussions and deliberations of the Party on all policies, and carried out Party policies with respect to their own organization, and fitted Party policies into the functions of their own organization" (Tr. 1005).[3]

On the basis of this evidence, the Board found that Green and Miss Barron were members of the Com-

[3] In addition, Dorothy Strange, who was identified as a Party member (Tr. 3161–3163), held the office of naturalization aid director of the Committee from 1948 until the position was abolished in 1952 (Report 16).

munist Party, that Green had been the leader of the Committee pursuant to a decision of the Communist Party, and that Green and Miss Barron controlled the national organization as representatives of the Party (Report 16, 49–50).[4]

b. In addition to the national office in New York, local organizations functioned in other places under names like the "New England Committee for Protection of the Foreign Born." The official organ of the American Committee, *The Lamp,* which was edited by Green, reported in detail on these committees (P. Exs. 24, 30, 35). It, as well as other publications of the American Committee, frequently listed the addresses of the local committees under the heading of "American Committee for Protection of Foreign Born," designating the local offices simply as "Mid-West," "North-West," etc. (P. Exs. 19, 56, 166; R. Exs. 84, 197).

The American Committee initiated the organization of the Mid-West and New England Committees (Tr. 5136–5138, 5144, 4079–4086, 6955–6956, 6962) and the reorganization of the Los Angeles Committee (Tr. 2377, 6869). The American and local committees worked intimately together. The local committees sent "delegates" to the annual conferences of the American Committee (Tr. 2462–2465, 2489). The New England and Los Angeles Committees published leaflets urging contributions to the American Committee (R. Ex. 22, 67).

[4] There was evidence of some contributions by the Party and Party officials to petitioner, but the organization seems to have drawn most of its financial support from the general public and interested organizations (Report 40, 46).

If a problem arose about some person in Chicago, which could not be handled by mail, Green sent him the name and address of the Mid-West Committee (Tr. 5131). The Northern California Committee handled the case of Dr. Krishna Chandra, but the American Committee obtained counsel to represent him (R. Ex. 22; Tr. 6568–6569). Green made numerous trips to visit the local committees (Tr. 2377, 6559–6560, 6869, 6955–6956, 6962).

The Board found that the "area or local committees are associated together for joint action on particular subjects. Together they constitute a voluntary association and one organization within the meaning of the term 'organization' set forth in section 3(2) of the statute" (Report 12).[5]

The "local" committees, like the national office, were run by an "executive secretary." The Board found that the executive secretaries of the Northwest, Western Pennsylvania, New England, Michigan, and Los Angeles Committees were members of the Communist Party (Report 16, 18–20). It also found that the treasurer of the Northwest Committee and the administrative secretary of Michigan were Party members. These findings were based on the testimony of witnesses who heard admissions of Party membership, sat in Party meetings with the persons in question, had Party business or attended Party

[5] Section 3(2) provides that "The term 'organization' means an organization, corporation, company, partnership, association, trust, foundation, or fund; and includes a group of persons, whether or not incorporated, permanently or temporarily associated together for joint action on any subject or subjects."

schools with them (Tr. 1584–1588, 2980–2986, 3115, 3124, 3128, 5193, 344, 353–354, 748–749, 800–801, 803–809, 1333–1335, 1528–1529, 1533, 1560, 2447, 2701, 5225). The organization of the Northwest Committee resulted from discussions in Communist Party meetings in Seattle about the need for a local branch of the American Committee to defend Party members (Tr. 1584, 1586–1588, 2980–2984, 5179). The executive secretary of the Northwest Committee was assigned to the post by a local Party official (Tr. 1588).

The Board concluded on the basis of this evidence that (Report 20):

> [T]he effective management, direction, and supervision of the local branches of [petitioner] are substantially and primarily performed by and are under the control of members and representatives of the Communist Party. In view of our findings *supra* as to the leadership of the national organization it follows that the entire organization (national and locals) is effectively under the management, direction and supervision, and controlled by members and representatives of the Communist Party.

2. *Aid and Support of the Communist Party.*—Petitioner's major activities are the defense of foreign-born persons in deportation and denaturalization cases and efforts to have legislation in this area repealed or amended. While petitioner has defended many persons not charged with membership in the Communist Party, a large part, if not a majority, of the cases in which it participated, did involve Party members. For example, it defended such important Party

leaders as Alexander Bittelman, Jack Stachel, John Williamson, and four members of the Party's national committee (Tr. 1050–1053; P. Exs. 16, 19; Report 44–45). Green testified that between 1948 and 1950 the Committee participated in more than 200 cases each year which he termed "political" (Tr. 6721, 6742). Four senior Immigration and Naturalization officers testified that of the 300 or more persons named by petitioner as threatened with deportation in a leaflet issued in 1950 (R. Ex. 19), a large proportion were charged with Party membership or similar activities (Tr. 3394–3509, 3510–3675, 3776–3855). Petitioner states (Pet. 8, note 6) that it has litigated 20 cases in this Court. Of the 20, all but two involved charges of Party membership, membership in an organization advocating violent overthrow of the Government, or similar activity.

In addition, petitioner engaged in publicity campaigns against deportation and denaturalization of members of the Communist Party. For example, in 1951, Green wrote an article as the Committee's executive secretary, condemning this Court's approval of certain deportation orders based on past membership in the Communist Party (P. Ex. 169). In 1953, petitioner circulated a booklet written by Green attacking the "rotten frameup of the Rosenbergs" as caused by anti-Semitism, and the prosecution of labor leaders under the Taft-Hartley Act (R. Ex. 191, p. 47).

The Board found that petitioner outside the field of the foreign born "as well as in its views and policies in the field of the foreign born has paralleled the

views and policies of the Communist Party and has not in any instance deviated therefrom. We find that the clear preponderance of the evidence establishes that the purposes of [petitioner] have been to aid and support the Communist Party" (Report 38).

ARGUMENT

The three issues in this case (see p. 2 above) involving the constitutionality and interpretation of the registration provisions[6] of the Subversive Activities Control Act are obviously of importance in administering the Act. However, we submit that further review on these issues is not necessary since the decision below was correct. The other, evidentiary issues raised by petitioner plainly do not warrant consideration by this Court under the well-established rule that review of the findings of administrative agencies is for the courts of appeals.

1. The registration provisions of the Act do not violate the First Amendment. In *Communist Party* v. *Subversive Activities Control Board*, 367 U.S. 1, 88, 105, this Court upheld the registration provisions of the Subversive Activities Control Act as applied to Communist-action organizations. The Court reasoned that the constitutionality of the provisions depended on "the magnitude of the public interests which the registration and disclosure provisions are designed to

[6] Just as in the *Communist Party* v. *Subversive Activities Control Board*, 367 U.S. 1, 70–81, the restrictions resulting from membership in an organization required to register are not before the Court. See also *Electric Bond & Share Co.* v. *Securities and Exchange Commission*, 303 U.S. 419.

protect and in the pertinence which registration and disclosure bear to the protection of these interests" (*id.* at 93); that Congress had found that the world-wide Communist movement controls clandestine Communist-action organizations in the United States which have the objective of overthrowing the government by force if need be; that these findings are not irrational and must be accepted by the courts (*id.* at 93–95); that this Court has upheld federal statutes providing for registration or disclosure of associations which were "a threat to public safety and to the effective, free functioning of our national institutions" in *Burroughs* v. *United States*, 290 U.S. 534, and *United States* v. *Harriss*, 347 U.S. 612 (*Communist Party* v. *Subversive Activities Control Board*, 367 U.S. at 97–99); and that, as in those cases, the registration provisions in the 1950 Act were a rational means of dealing with a serious problem (*id.* at 102).

This reasoning equally applies to Communist-front organizations. Section 3(3) of the Act defines a "Communist-action organization" as one controlled by the foreign government controlling the world Communist movement and operating to advance the objectives of that movement including overthrow of the United States government. Section 3(4) defines a Communist-front organization as controlled by a Communist-action organization and operated primarily to give aid and support to that organization. Thus, Communist-front organizations are an integral part of the world Communist movement. They are controlled by the world Communist movement and carry out its objectives through Communist-action organizations in the

United States. As Congress stated in its findings in the Act, Communist-action organizations, in attempting to overthrow existing governments by force if necessary (Section 2(7)):

> operate to a substantial extent through organizations, commonly known as "Communist fronts", which in most instances are created and maintained, or used, in such manner as to conceal the facts as to their true character and purposes and their membership. One result of this method of operation is that such affiliated organizations are able to obtain financial and other support from persons who would not extend such support if they knew the true purposes of, and the actual nature of the control and influence exerted upon, such "Communist fronts."

This Court specifically relied on this finding in determining that Communist-action organizations present a serious danger to America security. 367 U.S. at 94.

Petitioner contends (Pet. 22–23) that its activities are not illegal. Under the Board's findings, which the court of appeals upheld, the petitioner here is purposefully carrying out the work of the world Communist movement and promoting its ultimate aim of violent overthrow by trying to keep members of the Communist Party within the United States and by supporting the Party's general thesis that it is being persecuted. As this Court recognized in the *Communist Party* case, organizations can act on behalf of the world Communist movement and promote its objective of overthrowing the government of the

United States, without presently committing any illegal activities. 367 U.S. at 56. Since the Act is a regulatory rather than a penal statute (*ibid.*), Congress can, consistent with the First Amendment, provide for disclosure of petitioner's officers and members just as it could as to the Communist Party itself.

2. a. Petitioner argues (Pet. 18–22), and the dissent below agreed (Pet. App. A, pp. 18–21), that the aid component of the statute—which requires proof that the organization "is primarily operated for the purpose of giving aid and support to a Communist-action organization * * *"—is not satisfied by proof of activities directed toward innocent objectives of the Communist-action organization. However, the objectives of petitioner in attempting to prevent deportation and denaturalization of Party members were only innocent in the immediate case. The ultimate objectives of the Party members running the organization were the same objectives as that of the Party as a whole—*i.e.*, overthrow of the government. This goal would obviously be helped by allowing Party leaders and members to remain in the United States.

Moreover, the language of the statute is inconsistent with petitioner's contention. Section 3(4) in terms applies to all organizations primarily operated to give aid and support to a Communist-action organization regardless of the nature of the aid and support. Moreover, Section 2(7) of the Act states that "Communist fronts" conceal the facts as to their true character and purposes, so as to get support from

persons who would not extend support if they knew the true purposes and nature of the control and influence exerted upon them. No organization could function as a "front" if it advocated the Communist objectives of violent overthrow of the government.

Of course, an organization is not a Communist-front merely because the ends sought are also those of the Communist Party; on the other hand, it is a Communist-front if it espouses those causes because of Communist direction and control. If the organization takes its course, not because of independent conviction, but by reason of substantial direction or control by the Party and for the purpose of giving aid and support to the Party, then it is a Communist-front organization within the meaning of the Act. *Veterans of the Abraham Lincoln Brigade* v. *Subversive Activities Control Board,* C.A.D.C., No. 13,174, decided December 17, 1963.

b. This interpretation of the statute does not violate due process because of vagueness. The aid component of Section 3(4) is no more general than the analogous objectives component of Section 3(3), and this Court rejected the contention as to the latter without discussion in the *Communist Party* case. Moreover, the Court has frequently sustained general statutory provisions in regulatory statutes on the ground that Congress can properly leave their application to expert administrative agencies. *American Power Co.* v. *Securities and Exchange Commission,* 329 U.S. 90, 104–105; *Sunshine Coal Co.* v. *Adkins,* 310 U.S. 381, 399–400.

3. Petitioner was not denied due process because the Act does not allow it to relitigate the question whether the Communist Party is a Communist-action organization. This Court has held that "due process of law depends on circumstances. It varies with the subject-matter and the necessities of the situation." *Moyer* v. *Peabody*, 212 U.S. 78, 84. The tortuous history of the litigation in the *Communist Party* case (see 367 U.S. at 19–22) demonstrates the total impracticability of requiring in each case involving Communist-front organizations, the relitigation of the status of the Party as a Communist-action organization.

Moreover, in the litigation resulting in the final order requiring it to register, the Communist Party may be fairly said to have represented the organizations which it controls. As this Court stated in *Hansberry* v. *Lee*, 311 U.S. 32, 42–43, "It is familiar doctrine of the federal courts that members of a class not present as parties to the litigation may be bound by the judgment where they are in fact adequately represented by parties who are present * * *, or where for any other reason the relationship between the parties present and those who are absent is such as legally to entitle the former to stand in judgment for the latter." Accord, Restatement, *Judgments* (1942), § 86. Regardless of the rule in the absence of statute, at the least Congress' determination to have the Communist-action organization alone litigate its own character under the Act is not so unfair as to violate due process.

Petitioner suggests (Pet. 25) that they were entitled to relitigate the Party's status since the Board's finding related to 1953 and has become stale over the past decade. The non-Communist affidavit provision in the Labor Management Relations Act applied specifically to all members of the Communist Party. This Court upheld its constitutionality despite the fact that only Congress could remove the Party from the provisions of the statute. *American Communications Assn.* v. *Douds*, 339 U.S. 382. Similarly, Congress could reasonably decide that all organizations which are found to satisfy the standards of the Subversive Activities Control Act and refuse to register should continue under the disabilities of the Act because the Communist movement is a grave danger to national security and because its operations are extremely difficult to trace because of its secret and conspiratorial nature.

In any event, Congress has provided a means by which an organization can relitigate its status under the Act. Section 13(b) allows an organization registered under the Act to apply to the Attorney General as often as once a year to cancel its registration and, if he refuses, the organization "may petition the Board for a redetermination of its amenability to the registration requirements of the Act, pursuant to a hearing which, again, is subject to judicial review." *Communist Party* v. *Subersive Activities Control Board, supra,* 367 U.S. at 87. As this Court stated in the *Communist Party* case (*ibid.*), the Act offers "adequate means of relief" "[i]f the Party should at

any time choose to abandon" the activities which made it subject to the Act.

4. a. Petitioner contends (Pet. 28–34) that the Board erred in its evaluation of the evidence concerning control of petitioner by the Communist Party. The short answer to this contention was given by this Court in answer to a similar argument in the *Communist Party* case (367 U.S. at 69):

> We see no reason why still another court should independently reappraise the record. We have declined to do this in the case of other agencies as to whom reviewing power on the facts has been vested in the Courts of Appeals, and we find no purpose to be served in departing now from this settled policy of appellate review.

Here, the court of appeals, applying particularly strict standards (see Pet. App. A, p. 4), carefully reviewed the evidence. It found, as the Statement above (pp. 3–7) shows, that there was ample evidence for the Board to find that petitioner's national organization was headed by members of the Communist Party; that the local committees were "associated together for joint action" and therefore constituted a single "organization" as defined in the Act (Section 3(2)); that the local committees were run by Party members; and that, consequently, petitioner was "substantially directed, dominated, or controlled by a Communist-action organization" (Section 3(4)).[7]

[7] Petitioner contends (Pet. 27) that witness Lautner's testimony that he and another member of the Communist Party picked Party member Abner Green to head petitioner is irrelevant because this event occurred in 1942. This Court, however, rejected a similar contention in the *Communist Party* case con-

b. Petitioner's contention (Pet. 27–28) that the Board erred in refusing to allow cross-examination of witness Lautner as to his place of residence does not warrant further review. *Alford* v. *United States*, 282 U.S. 687, upon which petitioner relies, does not make refusal to allow cross-examination as to a witness' residence prejudicial error regardless of circumstances. The rule on such a question, as with all evidentiary rulings by the trier of fact, was stated in the *Communist Party* case in discussing a far more serious issue (367 U.S. at 29): "Wide discretion would be left to a trial judge and not less must be left to an agency like the Board in a matter of this kind—a matter of adjusting the process of inquiry to the exigencies of a particular situation as they appear to administrators immediately acquainted with the course of the proceedings."

Here, Lautner testified that his life had been threatened (Tr. 1835). The cross-examination, which petitioner says was "designed to expose his claim as insincere" (Pet. 27), did not include questions concerning his receipt of threats, but was instead limited to argumentative questions like, "As a matter of fact, the reason that you gave for refusing to answer my question is a complete invention which you have made up to glamorize and dramatize yourself, isn't that true?" (Tr. 1087–1092). In these circumstances, the Board did not abuse its broad discretion in refusing

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cerning evidence of events which occurred in many instances long before 1942. 367 U. S. at 69. Moreover, the evidence before the Board showed that Green had continued to represent the Party from 1942 to the time of the hearing in 1954.

to allow this question. But even if erroneous, such refusal to permit a single question during extensive cross-examination of a witness during lengthy administrative hearings was not prejudicial error justifying reversal.

CONCLUSION

For the foregoing reasons, we respectfully submit that the petition for a writ of certiorari should be denied.

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APRIL 1964.